

# Minnesota Restitution Working Group



First Meeting  
October 7, 2013

# Agenda



- Welcome and introductions
- How did we get here?
- Panel presentation – Overview of Restitution
- Victim's voice
- Restitution Working Group – Structure, timeline
- Overview of court data
- Committee formation – Breakout
- Wrap-up and Next steps

# History



- Crime Victim Bill of Rights, 1983
- Restitution Workgroup – Convened by the Crime Victim and Witness Advisory Council and the State Court Administrator. 1988
- Victims of Juvenile Crime Committee, Convened by the Minnesota Crime Victim and Witness Advisory Council, DPS (Final Report 1992)
- DOC Working Group on Restitution, 1998 (Legislatively mandated)

# More recently



- Continuing concerns
- Minnesota Alliance on Crime
  - Restitution Working Group (now called the “Restitution Resource Group”)
  - University of Minnesota Humphrey School of Public Affairs Capstone Project
- 2013 Legislative Session



# Working Group



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## 2013 MINNESOTA SESSION LAWS Chapter 34 (S.F. No. 769)

The Department of Public Safety shall convene a working group to study how restitution is currently being requested, ordered, and collected in Minnesota.

# Working Group



The working group must review, assess, and make specific recommendations with regard to the following areas:

- (1) the process by which restitution is requested by victims and ordered by the court
- (2) the statutory mechanisms for collecting restitution, including the establishment of payment plans, revenue recapture, and entry of civil judgments;
- (3) state and local policies, procedures, and strategies for collecting restitution, including restitution collection units, designated restitution probation officers, and department of corrections administrative policies; and
- (4) the extent to which data on restitution is collected.



# Panel Presentation

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## Overview of Restitution

Kelly Nicholson  
Evonn Wescott

Shane Baker  
Lesa Kramer



# Requesting Restitution



Kelly Nicholson

Dakota County Attorney's Office



# Establishing Restitution in Court



Shane Baker

Kandiyohi County Attorney's Office

# What is restitution?



- Restitution may include, but is not limited to, any out of pocket losses resulting from the crime
- Statute specifically mentions medical and therapy costs, replacing wages and services, services incurred to return a child the victim under Deprivation of Parental Rights to the parent or custodian, and funeral expenses



# What is the purpose of restitution?



- Restore the victim economically to the status quo before the crime.
- Rehabilitate the defendant.
- Punish the defendant.
- Bring a reconciliation between the defendant and the victim.



# What information must the victim provide in a restitution request?



Information must describe items or elements of loss, itemize dollar amounts claimed, and the reasons justifying these amounts

# What factors does a court consider in deciding whether to order restitution and the amount?



- Amount of economic loss sustained by the victim as a result of the offense,
- The income, resources, and obligations of the defendant.

# How does a defendant challenge restitution?




The offender shall have the burden to produce evidence if the offender intends to challenge the amount of restitution or specific items of restitution or their dollar amounts.



# How does a defendant meet this burden of production?

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This burden of production must include:

- A detailed sworn affidavit of the offender,
- Setting forth all challenges to the restitution or items of restitution, and
- Specifying all reasons justifying dollar amounts which differ from the amounts requested by the victim.

# When is defendant's affidavit not required?



When challenging the court's authority to order restitution (statutory time lines do not apply)

Once offenders meet the burden of production, what must the prosecutor do?



Demonstrate “the amount of the loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution.”



# What is the prosecutor's burden of proof?



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Preponderance of the evidence

# When does the court consider a restitution request?



“In order to be considered at the sentencing or dispositional hearing, all information regarding restitution must be received by the court administrator ... at least three business days before the sentencing or dispositional hearing.”

# Can restitution be reserved?



**Yes.** “The restitution request may be continued if the victim’s affidavit or other competent evidence submitted by the victim is not received in time.”



# If restitution is reserved, when must the victim submit restitution information?



Statute does state that “the court may amend or issue an order of restitution after a sentencing or dispositional hearing if:

- (1) The offender is on probation, committed to the commissioner of corrections, or on supervised release; and
- (2) Sufficient evidence of a right to restitution has been submitted; and
- (3) The true extent of the victim’s loss was not known at the time of the sentencing or dispositional hearing or hearing on restitution request.

# When must offender challenge restitution?



An offender must challenge restitution within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of the sentencing, whichever is later.

# And if the Defendant is late?



A Defendant may not challenge restitution after the 30-day time period has passed.



# When must the Defendant's sworn affidavit be served?



The affidavit must be served on the prosecuting attorney and the court at least five business days before the hearing.

# Role of Probation



Evonn Wescott

Brown County Probation



# PO Involvement



Probation officers may be involved in the restitution process from presentence investigation through probation expiration.

- Pre-trial – restitution investigation
- Sentencing – filing impact statements and certificate of restitution
- Probation Supervision – enforcement/collections
- Violations - non-payment
- Probation Expiration - civil judgments



# Key Components for Successful Enforcement of Restitution Orders



- Develop and support an agency culture of enforcing restitution orders.
- Develop and enforce a policy and procedure practice to support enforcement.
- Define progressive intermediate sanctions available to agents.
- Establish and maintain a cooperative relationship with the Court and victim advocate(s).

# Difficulties



- Many offenders released from prison/jails have a substantial amount of debt to repay
- Offenders have difficulty obtaining employment
- Criminal Justice Agencies are fee driven
- Child support and restitution are both fighting for payment
- Manageable size caseloads and requirements on PO's

# Minnesota Statutes



- **Minn. Stat. § 609.135 (1a):** If the court orders payment of restitution as a condition of probation and the defendant fails to pay, the probation officer or prosecutor or at the request of the victim, will ask the court to hold a hearing to determine whether or not the conditions of probation should be changed or probation should be revoked. The defendant's probation officer shall ask for the hearing if the restitution ordered has not been paid prior to 60 days before the term of probation expires.
- **Minn. Stat. § 611A.037:** Every presentence investigation report must contain a "victim impact statement" consisting of a summary of the damages or harm and statement of what disposition the victim deems appropriate.
- **Minn. Stat. § 611A.046:** Victims have the right to ask the offender's probation agent to request a probation review hearing if the offender fails to pay restitution as required in a restitution order.



# Innovative Approaches



- Forfeit bond (NY sets bond at amount of restitution for probation violators)
- Collecting restitution while offenders are in institutions
- Provide incentives
- Accept credit card payments
- Garnish Wages
- Convert restitution to community service work
- Extend community supervision
- Use Mediation

# Tools/Techniques to Collect



- Wants vs. needs
- Teach collection efforts
- Identify disposable income and redirect those monies to the court; asset determination
- Invite the victim to attend violation hearings
- Over ride supervision risk and increase contacts
- Assist victims with the Judgment process

# DOC Institutions



- The DOC is assessing an additional 10% “surcharge” on all incoming and outgoing offender funds to be used for court-ordered restitution and court obligations
- A 5% surcharge will be assessed on most canteen purchases for court ordered restitution and fines
- Offenders can choose to put more money toward restitution and fines without incurring any surcharge to address their obligation more quickly
- Thanks to a BJA grant, the DOC is adding further enhancement to the MN CHOICE system to allow victims to check if a restitution order has been provided to the DOC and whether payments have been made.



# District Court Restitution Overview



Lesa Kramer

State Court Administrator's Office  
Finance Division



MINNESOTA  
JUDICIAL BRANCH



# Discussion Topics



- Restitution Order
- Due Dates and Payment Plans
- Collection Process
- Collection Period
- Disbursement Process
- Judgment Process





# Restitution Order



- When Occurs
  - Day of sentencing
  - Post-sentencing after restitution study
- Form of Order
  - Part of standard sentencing order
  - Separate restitution order





# Due Dates & Payment Plans



- Financial Obligation Owed
  - One time due date
  - Payment plan set
  - No payment plan established



# Collection Process



- Auto Referral Process
  - Automated collection referral based off due dates
  - Identifies cases overdue relays case information to DOR
  - Cases eligible for automated process
    - Cases with due dates
    - Cases with convictions



# Collection Process



## Judicial Branch Procedure



### Minnesota Judicial Branch Procedures

<b>Policy Source:</b>	State Court Administrator
<b>Policy Number:</b>	2.09(b)
<b>Category:</b>	Finance
<b>Title:</b>	Collection of Past-Due Accounts
<b>Effective Date:</b>	<b>February 1, 2010</b>
<b>Revision Date:</b>	March 1, 2012
<b>Contact:</b>	Director of Finance

### Collection of Past-Due Accounts

#### I. PURPOSE

This policy establishes uniform guidelines for the diligent collection of Court fines, fees, and other payments owed.





# Collection Process



## **Minn. Stat. § 609.104 Fine and Surcharge Collection**

### **Subdivision 1. Failure to pay restitution or fine.**

(a) Any portion of a fine, surcharge, court cost, restitution, or fee that the defendant fails to pay by the due date may be referred for collection under section 480.15, subdivision 10c. If the defendant has agreed to a payment plan but fails to pay an installment when due, the entire amount remaining becomes due and payable and may be referred for collection under section 480.15, subdivision 10c.

(b) The defendant may contest the referral for collection based on inability to pay by requesting a hearing no later than the due date. The defendant shall be notified in writing at sentencing that under section 480.15, subdivision 10c, the court may refer the case for collection for nonpayment, and collection costs may be added to the amount due. The defendant shall also be notified in writing of the right to contest a referral for collection. The state court administrator shall develop the notice language.



# Collection Process



## Department of Revenue (DOR) Collection

### More tools for collection

- Resources to locate debtor assets
- Revenue recapture (MN & WI)
- Notice letters
- Payment plans
- Wage levies
- Property liens
- Property seizures
- Business license revocation
- Capture of Minnesota vendor payments
- If internal collections fail, referral to collection agency for outbound calling



# Collection Period



## **Minn. Stat. § 609.104 Fine and Surcharge Collection**

### **Subd. 2. Fine and surcharge collection.**

(a) A defendant's obligation to pay court-ordered fines, surcharges, court costs, restitution, and fees shall survive after the due date for a period set by the Judicial Council.

(b) Any change in the collection period established by the Judicial Council shall be effective on court-ordered fines, surcharges, court costs, restitution, and fees imposed on or after July 1, 2009.

(c) The period relating to a defendant's obligation to pay restitution under paragraph (a) does not limit the victim's right to collect restitution through other means such as a civil judgment.

(d) Nothing in this subdivision extends the period of a defendant's stay of sentence imposition or execution.





# Disbursement Process



## **Minn. Stat. § 611A.04, subd 2 :**

The court administrator shall disburse restitution in incremental payments and may not keep a restitution payment for longer than 30 days; except that the court administrator is not required to disburse a restitution payment that is under \$10 unless the payment would fulfill the offender's restitution obligation.

**Unclaimed Restitution:** Restitution payments unclaimed by a victim after three years are to be turned over to Crime Victims Reparations Board.



# Judgment Process



- Victim completes affidavit of identification to docket judgment
- Court administration initiates new civil file
  - No filing fee required
  - Interest accrues
  - Restitution payments received by court credited to criminal file
  - Payment not credited to civil judgment unless judgment creditor files necessary satisfaction of judgment

# Victim's Voice



Terri Johnson



# Restitution Working Group Mechanics



Suzanne Elwell

Office of Justice Programs

# Committees



Requesting and ordering restitution

Chair: Shane Baker

Post-disposition

Chair: Kelly Moller

Juvenile

Chair: Suzanne Elwell (or other volunteer)

# Committee Work



- Committees will meet in a series of meetings to explore the issues in-depth.
- Map out barriers/roadblocks/challenges for different stages of restitution process.
- Review different models used by counties.
- Identify best practices and promising practices.
- Craft recommendations



# End product



The commissioner of public safety shall file a report detailing the working group's findings and recommendations with the chairs and ranking minority members of the house of representatives and senate committees having jurisdiction over criminal justice policy and funding by **January 15, 2015**.

The report may include recommendations for legislation designed to improve, in a cost-efficient manner, the right to restitution granted to victims of crime under Minnesota Statutes, section 611A.04.

# Timeline



## PHASE 1

Formation  
and  
Introduction

## PHASE 2

Identifying Issues and formulating  
recommendations.

## PHASE 3

Findings and  
Recommendations

Oct 13

Nov 13

Dec 13

Jan 14

Feb 14

Mar 14

Apr 14

May 14

Jun 14

Jul 14

Aug 14

Sep 14

RWG  
Meeting

Committee  
Meetings

Committee  
Meetings

RWG  
Meeting

Committee  
Meetings

Committee  
Meetings

RWG  
Meeting

Possible sub-committee meetings  
on special issues/topics.

Additional committee meetings if necessary for  
discussion or refinements of recommendations

# Materials



- RWG Binder
- Restitution Resource Library (“The Cloud”)
  - List of Cloud materials located in binder
  - RWG Admin materials posted in folder in “The Cloud”
  - Materials from committees and members will be added



# Overview of Court Data



Deb Dailey

State Court Administrator's Office  
Research and Evaluation

# Committee Formation



Break into small groups

- Prosecution
- Advocacy
- Probation/CC/DOC
- Court administration and judges

# Conclusion - Next Steps



- Sign up for committees on flip charts
- Verify contact information if you haven't done so already.
- Alternates?